

SUSMAN GODFREY L.L.P.

A REGISTERED LIMITED LIABILITY PARTNERSHIP  
SUITE 5100  
1000 LOUISIANA STREET  
HOUSTON, TEXAS 77002-5096  
(713) 651-9366  
FAX (713) 654-6666  
WWW.SUSMANGODFREY.COM

SUITE 1400  
1900 AVENUE OF THE STARS  
LOS ANGELES, CALIFORNIA 90067-6029  
(310) 789-3100

SUITE 3800  
1201 THIRD AVENUE  
SEATTLE, WASHINGTON 98101-3000  
(206) 516-3880

32ND FLOOR  
1301 AVENUE OF THE AMERICAS  
NEW YORK, NEW YORK 10019-6023  
(212) 336-8330

WILLIAM R.H. MERRILL  
DIRECT DIAL (713) 653-7865

E-MAIL BMERRILL@SUSMANGODFREY.COM

December 29, 2021

Hon. Michael J. Roemer  
United States Magistrate Judge  
Robert H. Jackson United States Courthouse  
2 Niagara Square  
Buffalo, New York 14202

RE: *In Re Caustic Soda Antitrust Litigation*, Lead Case No.: 19-cv-00385

Dear Judge Roemer:

We represent Westlake Chemical Corporation, and on behalf and with the consent of the Defendants, we submit this status report pursuant to the Court's decision and order dated December 8, 2021 [Doc. 381].

Prior to and since December 8, 2021, Defendants have productively conferred with the distributor non-parties. Most have agreed to produce transactional data, and several have made initial data productions and are informally answering questions about their transactional data to facilitate an efficient and appropriate production. Certain distributors have made other document productions. Certain distributors have agreed on custodians, and several are discussing search terms and/or hit counts with Defendants. Defendants believe it will take a few additional weeks to reach an agreement with each of the distributors. We may reach an impasse with one or more distributor, but as of yet we have not.<sup>1</sup>

Defendants have also moved forward to notice deposition subpoenas to Brenntag and Univar. Counsel for Brenntag and Univar has accepted service of Rule 30(b)(6) deposition subpoenas directed to those distributors, and Defendants have sent notice to Plaintiffs of such subpoenas.

---

<sup>1</sup> Attached as "Attachment A" please find a chart listing counsel for each distributor and as "Attachment B" a chart summarizing the status of each distributor's response to Defendants' subpoenas.

Hon. Judge Michael J. Roemer

December 29, 2021

Page 2

Defendants will attempt to accomplish the depositions within the discovery period but may not be able to do so, as Defendants are still awaiting document productions from Brenntag and Univar.

Defendants believe the parties and non-party distributors will benefit from a deadline for the distributors to run proposed search terms against agreed custodians and report back with hit counts, so the parties can determine if any of the search terms will result in an unreasonable number of hits. Defendants ask that the Court set a deadline of January 7, 2022 or another reasonable date.

DATED: December 29, 2021

Sincerely,

/s/ William R.H. Merrill

William R. H. Merrill

/s/ Terrance P. Flynn

Terrance P. Flynn

*Counsel for Westlake Chemical Corporation*

**Attachment A**

	<b>Distributor</b>	<b>Counsel</b>	<b>Subpoena Served</b>	<b>Objections Served</b>
1.	Allegiance Chemical	Aaron Turner Levin Gann PA	10/12/2021	11/2/2021
2.	Brenntag	Josh Graber Graber Law Office	8/13/2021	8/25/2021
3.	Chou Chemical	Rob Wilder Wilder Pantazis Law Group	10/7/2021	
4.	Connection Chemical	Marc Tepper Buchanan Ingersoll & Rooney	10/6/2021	10/20/2021
5.	Harcros	Steve Neeley Husch Blackwell	8/30/2021	10/13/2021
6.	Hawkins	Josh Grabar Grabar Law Office	9/30/2021	10/14/2021
7.	Kuehne Chemical	Brian McCalmon	10/6/2021	
8.	PVS	Michael Lennon Roach Lennon & Brown, PLLC	10/6/2021	
9.	Rowell	James J. McKeown Denio DiFrancesco Anne M. Coglein Foley & Lardner	8/13/2021	11/3/2021
10.	Surpass Chemical	John B. DuCharme	10/12/2021	10/24/2021
11.	Tricon	William Farmer Farmer Brownstein Jaeger Goldstein Klein & Siegel	9/20/2021	
12.	Univar	Josh Grabar Grabar Law Office	8/10/2021	8/25/2021

**Attachment B**

	<b>Subpoenaed Non-Party</b>	<b>Transactional data</b>	<b>Custodians</b>	<b>Search Terms</b>	<b>Document Production</b>	<b>Meet and Confers</b>	<b>Status</b>
1.	Allegiance Chemical	Requested by Defendants	Pending	Proposed by defendants on 12/21/21		10/29/21: conferred by phone 11/01/21: conferred by email 11/04/21: conferred by email 12/21/21: conferred by email 12/27/21: conferred by phone	Defendants await Allegiance's response on custodians and proposed search terms.
2.	Brenntag	Agreed to produce transactional purchase and sales data and provided sample data for review	9 custodians	Proposed by defendants on 10/28/21	Organizational charts; documents pending	Numerous conferences by phone and email prior to the Court's hearing and the following post-hearing: 12/08/21: conferred by phone 12/14/21: conferred by email 12/17/21: conferred by email 12/22/21: conferred by email	Defendants await Brenntag's hit counts or document production and responses to questions about swaps and exchanges. Counsel accepted service of a Rule 30(b)(6) deposition subpoena, and Defendants have sent notice to Plaintiffs of this subpoena.
3.	Chou Chemical	Agreed to produce transactional purchase and sales data	Pending	Proposed by defendants on 12/23/21	Pending	12/13/21: conferred by phone 12/23/21: conferred by email	Defendants await Chou Chemical's hit counts or document production.
4.	Connection Chemical	Agreed to produce transactional purchase and sales data and produced transactional purchase data	Pending	Proposed by defendants on 10/28/21	Pending	10/18/21: conferred by phone 11/03/21: conferred by phone 11/09/21: conferred by email 12/08/21: conferred by phone and email 12/19/21: conferred by email 12/21/21: conferred by phone and email 12/26/21: conferred by email	Defendants await Connection Chemical's response on custodians and proposed search terms.

5.	Harcros	Agreed to produce transactional purchase and sales data and produced transactional purchase and sales data	Pending	Proposed by defendants on 12/20/21		9/20/21: conferred by phone 12/20/21: conferred by email 12/22/21: conferred by phone	Defendants await Harcros' response on custodians and proposed search terms.
6.	Hawkins	Agreed to produce transactional purchase and sales data and produced transactional data	4 custodians	Proposed by defendants on 10/28/21	Organizational chart; documents pending	Numerous conferences by phone and email prior to the Court's hearing and the following post-hearing: 12/08/21: conferred by phone 12/14/21: conferred by email 12/17/21: conferred by email 12/22/21: conferred by email	Defendants await Hawkins' hit counts or document production.
7.	Kuehne Chemical	Agreed to produce transactional purchase and sales data		Proposed by defendants on 10/28/21	Pending	10/20/21: conferred by phone 10/29/21: conferred by phone 12/08/21: conferred by email 12/22/21: conferred by phone 12/28/21: conferred by phone	Defendants await Kuehne Chemical's response to proposed search term modifications or document production.
8.	PVS	Produced transactional purchase and sales data		Proposed by defendants on 11/09/21	Pending	11/03/21: conferred by phone 11/18/21: conferred by phone 12/23/21: conferred by email	Defendants await PVS' hit counts or document production.
9.	Rowell	Agreed to produce transactional purchase and sales data and provided sample data for review			Pending	Several conferences by phone prior to the Court's hearing and the following post-hearing: 12/20/21: conferred by email	Defendants await Rowell's responses to questions about transactional data and related documents.

10.	Surpass Chemical	Agreed to produce limited transactional purchase data	2 custodians	Proposed by defendants on 12/08/21	Pending	10/28/21: conferred by phone 12/08/21: conferred by email 12/20/21: conferred by phone 12/21/21: conferred by email 12/22/21: conferred by email 12/27/21: conferred by email	Defendants await production of transactional purchase data and cost estimate for production of sales data. Surpass Chemical is unwilling to reveal its customer names.
11.	Tricon	Agreed to produce transactional purchase and sales data and has produced transactional data	Pending	Proposed by defendants on 12/06/21	Copy of data received on December 8 from IPPs	12/06/21: conferred by phone 12/07/21: conferred by email 12/16/21: conferred by email 12/22/21: conferred by email 12/23/21: conferred by phone	Tricon recently retained new counsel. Defendants await Tricon's response on custodians, request for additional transactional data, and search terms.
12.	Univar	Sample produced; answering questions informally		Proposed by defendants on 10/28/21	Pending	Numerous conferences by phone and email prior to the Court's hearing and the following post-hearing: 12/08/21: conferred by phone 12/14/21: conferred by email 12/17/21: conferred by email 12/22/21: conferred by email	Defendants await Univar's hit counts or document production. Counsel accepted service of a Rule 30(b)(6) deposition subpoena, and Defendants have sent notice to Plaintiffs of this subpoena.